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File No. Prohibition II/51 (R), pt. II

Legal Department

B **BRANCH**

Subject:— Rules under the Bombay Prohibition Act, 1949

(For previous pps. pl. see Part I).

File No. Prohibition II/51 (R) Part II.

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56-B

Office of the R.L.A.

The proposal to amend the Bombay Foreign Liquor Rules, 1950 in the manner shown at pages 348-350 ante has arisen for the following reasons

The American Counsul General in his letter at page 301 requested that a special permit be issued in favour of Mrs. Alice B. Patillo, the mother - in-law of the American Consul (Mr.Giles A. Hubert). The Director holds that her case does not fall under section 41 of the Bombay Prohibition Act, 1949 ,since that section extends the priwilege only to the consulate or any member of the staff entitled to diplomatic privileges of a consul. The Director, however, pointed out that he may be given permission to issue a special permit under section 52 of the Act to other adult female members of the family of any Sovereign, Ambassador etc. Government therefore in their memo at page 313 authorized the Director to issue special permits to adult female members of the family of any Sovereign, Ambassador, Envoy or Consul. The Director has accordingly forwarded draft rule 66A to be inserted in the Bombay Foreign Liquor Rules providing for the special permit for the relatives of privileged personages.

2. It is clear that the relatives of a previleged personage are foreigners.But as their stay in India in many cases is bound to be more than six months they would not be deemed to be foreigners for the purposes of section 40 of the Bombay Prohibition Act. The Supreme Court in the Bombay Phihibition Case held section 40(1)(c) as valid for the following reasons:

"There is nothin unreasonable in a law relating to prohibition discriminating between Indian citizens against whom it is primarily to be enforced, and foreigners who

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have no intension of permanently residing in this country. The condition of six months' residence which is laid down in the explanation to section 40 is somewhat arbitrary, and the mere fact that the Government by notification withdrew this condition cannot in principle alter the basis of the classification ." The explanation to section 40 is proposed to be deleted in the Bill amending the Bombay Prohibition Act. The notification referred to in the judgment was the notification No. 10484/45(c), dated 30th March 1950 issued under section 139(1)(c) of the Act, exempting foreigners from the provisions of the proviso (a.1) read with the Explanation to clause (c) of sub-section (1) of section 40 of the Act. As the Bombay High Court had held section 139(c) to be invalid the said notification was cancelled. It is true that section 139(c) has been held to be valid by the Supreme Court. If the administrative department is satisfied that a special permit should be granted to Mrs. Alic B. Patillo, it should be granted to her under section 52 of the Bombay Prohibition Act after stating that she has been exempted from the requirement in section 40(1)(c) regarding the period of residence. The suggestion of the Director of Prohibition to make a rule for the purpose is not correct. No rule can be made which would be inconsistent with the provisions of the Act, as they exist .

Id/-

J.R.D.

19/12/

Remembrancer of Legal Affairs.

U.R. to R.D. No. 20158 , dated the 18th December 1951.

VVK. 30th July 1956.
5C.

Office of the R.L.A.

Draft Rules at pp. 15-21.- There is already a rule in the Bombay Foregin Liquor Rules, 1950 , which requires persons applying for such permits to appear for medical examination before the Medical Board, to present his application to such Board with a fee of Rs. 1/- for medical examination and obtain a medical examination certificate in form F.L.M.C. from the Board (vide rule 64). In view of this as well as in view of the criticism made both by the High Court and the Supreme Court against the method of issuing numerous rules in connection with the prohibition policy (vide R.I.A.'s opinion No. 17567 dated the 6th November 1951) , it will be desirable to have the proposed rules incorporated in the Bombay Foreign Liquor Rules, 1950 , instead of having a separate set of rules as proposed by the Revenue Department. The Revenue Department is, therefore, requested to incorporate these rules in the Bombay Foreign Liquor Rules, 1950 and then send them to the R.L.A. for scrutiny, if necessary.

2- Draft notification at p. 33 ante .- The Revenue Department draft notification at p. 33 ante, as slightly amendmed, is in order.

The word "special " occuring before the words "Medical Board" has been deleted as the expression used in section 8 of the Act under which such boards are constituted is "Medical Board " and not "special medical board ".

Id/- J.R.D.
dt/- 20/12.

Remembrancer of Legal Affairs.

U.R. to R.D .No. 20363 , dated the 21st December, 1951.

V.V.K. 30/7/56/
5C.